

**TRUST INDENTURE**

**BETWEEN**

**CITY OF WESTFIELD, INDIANA**

**AND**

**[TRUSTEE]  
As Trustee**

**\$\_\_\_\_\_**

**CITY OF WESTFIELD, INDIANA  
TAXABLE ECONOMIC DEVELOPMENT LEASE RENTAL REVENUE BONDS,  
SERIES 20\_\_ (UNION SQUARE PROJECT)**

**Dated as of \_\_\_\_\_1, 20\_\_**

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## TRUST INDENTURE

THIS TRUST INDENTURE dated as of the first day of [\_\_\_\_\_] 1, 20\_\_] (this “Indenture”), by and between the CITY OF WESTFIELD, INDIANA (“Issuer”), a municipal corporation duly organized and existing under the laws of the State of Indiana (the “State”) and [\_\_\_\_\_] a national banking association, duly organized, existing and authorized to accept and execute trusts of the character herein set out, as Trustee (“Trustee”);

### WITNESSETH:

WHEREAS, the Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (collectively, the “Act”), authorizes and empowers the Issuer to issue revenue bonds and to lend the proceeds therefrom to an individual or an entity for the purpose of financing the costs of construction of economic development facilities, for diversification of economic development and promotion of job opportunities in or near such Issuer and vests the Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, to foster economic development in the Issuer, the Issuer, the City of Westfield Redevelopment Commission (the “Redevelopment Commission”), and Union Square Plaza, LLC (the “Developer”) entered into a Development Agreement (the “Development Agreement”) with respect to the construction and equipping of an structured parking garage containing approximately 300 parking spaces, garage entrances and exits, ramps, elevators, stairwells, elevator lobbies and all related facilities; and all facades, exterior walls, roofs, foundations and other structural and aesthetic components thereof, together with all necessary appurtenances, related improvements and equipment, as more particularly described in the Development Agreement (the “Project”); and

WHEREAS, pursuant to the Development Agreement, the Issuer has agreed to issue bonds under the Act to finance the costs of all or a portion of the Project; and

WHEREAS, the Act provides that such bonds may be secured by a trust indenture between the Issuer and a corporate trustee; and

WHEREAS, to assist in the completion of the Project, the Issuer desires to issue its Taxable Economic Development Lease Rental Revenue Bonds, Series 20\_\_ (Union Square Project) in the aggregate principal amount of \$[\_\_\_\_\_] (the “Series 20\_\_ Bonds”) pursuant to a Trust Indenture dated as of the first day of the month in which the Series 20\_\_ Bonds are issued (the “Indenture”), and to lend the proceeds of the Series 20\_\_ Bonds pursuant to the provisions of the Loan Agreement, dated as of [\_\_\_\_\_] 1, 20\_\_] (the “Loan Agreement”), between the Issuer and the City of Westfield Building Corporation (the “Borrower”), for the purpose of paying all or a portion of the costs of the Project, including capitalized interest, if any, and fund a debt service reserve from proceeds of the Series 20\_\_ Bonds or cash on hand, if necessary; and

WHEREAS, the Issuer, upon finding that the Project and the proposed financing of all or a portion of the Project will create additional employment opportunities in the Issuer; will benefit the health, safety, morals, and general welfare of the citizens of the Issuer and the State of

Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing, the Indenture and the Series 20\_\_ Bonds; and

WHEREAS, the execution and delivery of this Indenture and the issuance of the Series 20\_\_ Bonds hereunder have been in all respects duly and validly authorized by an ordinance duly passed and approved by the Issuer; and

WHEREAS, the Loan Agreement provides for the repayment by the Borrower of the loan of the proceeds of the Series 20\_\_ Bonds and further provides for the Borrower's repayment obligation to be evidenced by the Borrower's Note, Series 20\_\_ ("Series 20\_\_ Note") in substantially the form attached thereto as Exhibit A; and

WHEREAS, pursuant to this Indenture, the Issuer will endorse the Series 20\_\_ Note without recourse and assign certain of its rights under the Loan Agreement as security for the Series 20\_\_ Bonds which are payable solely and only out of the payments to be made by the Borrower with respect to the Series 20\_\_ Note, and any other Notes issued under the Loan Agreement (collectively, the "Notes") except to the extent paid out of Bond proceeds; and

WHEREAS, to provide for the financing and construction of a portion of Project, the Borrower has entered into a Lease Agreement, dated as of [\_\_\_\_\_, 20\_\_], between the Borrower, as lessor, and the Redevelopment Commission, as lessee (the "Lease"); and

WHEREAS, pursuant to Indiana Code 36-7-14-25.2 and Indiana Code 36-7-14-25.3, the lease rentals under the Lease are payable from (i) real property tax increment ("TIF Revenues") generated in the Union Square Allocation Area (the "Allocation Area") established by the Redevelopment Commission and (ii) to the extent TIF Revenues are ever insufficient, from the City's portion of the local income tax revenues distributed to the City as the certified shares component of additional revenue derived from the expenditure rate under Indiana Code 6-3.6 (the "LIT Revenues") or (iii) at the option of the Redevelopment Commission, from any other revenues legally available to the Redevelopment Commission; and

WHEREAS, the Notes issued under the Loan Agreement will be payable from the lease rentals received by the Borrower from the Redevelopment Commission under the Lease (the "Lease Rental Payments"); and

WHEREAS, the Series 20\_\_ Bonds and the Trustee's certificate of authentication to be endorsed thereon are all to be in substantially the following forms, and any Additional Bonds and Trustee's certificate of authentication are also to be in substantially the following forms (except as to redemption, sinking fund and other provisions peculiar to such Additional Bonds), with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture, to-wit:

(Form of Series 20\_\_ Bond)

R-\_\_\_\_

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF HAMILTON

CITY OF WESTFIELD, INDIANA  
TAXABLE ECONOMIC DEVELOPMENT LEASE RENTAL REVENUE BONDS,  
SERIES 20\_\_ (UNION SQUARE PROJECT)

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Date</u>	<u>Authentication Date</u>	<u>[CUSIP</u>
_____%	_____	_____, 20__	_____, 20__	_____]

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

The City of Westfield, Indiana (the “Issuer”), a municipal corporation duly organized and existing under the laws of the State of Indiana, for value received, hereby promises to pay in lawful money of the United States of America to the Registered Owner listed above, but solely from the payments on the Series 20\_\_ Note and Lease Rental Payments hereinafter referred to pledged and assigned for the payment hereof, the Principal Amount set forth above [on the Maturity Date set forth above] OR [on January 1 and July 1 on the dates and in the amounts as set forth on Exhibit A attached hereto,] (unless this bond is subject to and is called for redemption prior to maturity as provided for herein), and to pay interest hereon at the Interest Rate [stated above] OR [set forth on Exhibit A attached hereto] from the interest payment date to which interest has been paid next preceding the date of authentication of this bond unless this bond is authenticated after the fifteenth day of the immediately prior month in which interest is payable in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before \_\_\_\_\_ 1, 20\_\_, in which case it shall bear interest from the Original Date, until the principal shall be fully paid, which interest is payable on January 1 and July 1 of each year, beginning on \_\_\_\_\_ 1, 20\_\_. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Interest on this bond is payable by check or draft mailed one business day prior to the interest payment date to the person in whose name this Bond is registered on the fifteenth day preceding such interest payment date [, or by wire transfer of immediately available funds on the interest payment date to a registered owner of One Million Dollars (\$1,000,000) or more in aggregate principal amount who requests the same in writing to the Trustee at least five (5) business days prior to the applicable interest payment date, to the person in whose name this bond is registered on the fifteenth day of the month immediately preceding such interest payment date]. Principal of and premium, if any, on this bond is payable in lawful money of the United States of America at the corporate trust operations office of \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_ (the “Registrar” and the “Paying Agent”) or at the principal office of any successor trustee or paying agent. [No presentation of this Bond is required for such payments made to the Registered Owner except that upon final payment, this Bond shall be returned to the Paying Agent for destruction.]

This bond is one of an authorized issue of bonds of the Issuer, all of like date, tenor and effect (except as to numbering, interest rates, and dates of maturity), in the aggregate principal amount of [\_\_\_\_\_] Dollars (\$\_\_\_\_\_) (the “20\_\_ Bonds”), issued under and in accordance with, and all equally and ratably entitled to the benefits of, and ratably secured by, a Trust Indenture (the “Trust Indenture”), dated as of \_\_\_\_\_ 1, 20\_\_, between the Issuer and [\_\_\_\_\_] as trustee (the “Trustee”), to which reference is hereby made for a description of the property securing the 20\_\_ Bonds and any additional parity Bonds issued thereunder (the “Additional Bonds”) (the 20\_\_ Bonds and any Additional Bonds, collectively, the “Bonds”), the rights under the Trust Indenture of the Issuer, the registered owners of the Bonds and the Trustee, to all of which the registered owners hereof, by the acceptance of this bond, agree.

The 20\_\_ Bonds are being issued for the purpose of providing funds to finance a portion of the cost of the construction and equipping of a structured parking garage containing approximately 300 parking spaces, garage entrances and exits, ramps, elevators, stairwells, elevator lobbies and all related facilities; and all facades, exterior walls, roofs, foundations and other structural and aesthetic components thereof, together with all necessary appurtenances, related improvements and equipment (the “Project”), to be constructed by Union Square Plaza, LLC in the City, by lending such funds to the City of Westfield Building Corporation (the “Borrower”) pursuant to the Loan Agreement dated as of [\_\_\_\_\_] 1, 20\_\_ (the “Loan Agreement”) between the Borrower and the Issuer. The Loan Agreement prescribes the terms and conditions under which the Borrower shall repay such loan and pursuant to which the Borrower will execute and deliver to the Issuer its Note, Series 20\_\_ (the “Series 20\_\_ Note”) in a principal amount equal to the principal amount of such 20\_\_ Bonds in order to evidence such loan.

The Bonds are special and limited obligations of the Issuer payable solely from and secured exclusively by the Series 20\_\_ Note, the Lease Rental Payments (as defined in the Trust Indenture), and other moneys assigned by the Trust Indenture. The Trust Indenture permits the issuance of Additional Bonds under the conditions set out in Section 2.8 thereof and allows the Issuer to terminate the security of the Trust Indenture for Bonds by establishing a trust fund under the conditions set out in Section 11.2 thereof. Reference is made to the Trust Indenture and to all indentures supplemental thereto and to the Loan Agreement for a description of the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the rights of the holders of the Bonds, the terms on which the Bonds are being issued and secured, and to all the provisions of which the holder hereof by the acceptance of this 20\_\_ Bond assents.

[The owner of this Bond, by acceptance of this Bond, hereby agrees to all of the terms and provisions in the Indenture and this Bond and acknowledges that:

1. It is a bank as defined in Section 3(a)(2) of the Securities Act of 1933, as amended. It is a sophisticated investor with extensive experience in purchasing and evaluating obligations similar to the Bonds.

2. It is familiar with the Issuer; it has received such information concerning the Issuer, the Bonds, the LIT Revenues and the TIF Revenues, as it deems to be necessary in



connection with investment in the Bonds. It has received, read and commented upon copies of the Indenture and the Loan Agreement. Prior to the purchase of the Bonds, it has been provided with the opportunity to ask questions of and receive answers from the representatives of the Issuer and the Company concerning the terms and conditions of the Bonds, the tax status of the Bonds, legal opinions and enforceability of remedies, the security therefor, and property tax reform (including the circuit breaker), and to obtain any additional information needed in order to verify the accuracy of the information obtained to the extent that the Issuer possesses such information or can acquire it without unreasonable effort or expense. It is not relying on Dinsmore & Shohl LLP or O.W. Krohn & Associates LLP for information concerning the financial status of the Issuer and the Company or the ability of the Issuer and the Company to honor their respective financial obligations or other covenants under the Bonds, the Indenture or the Loan Agreement. It understands that the projection of the TIF Revenues prepared in connection with the issuance of the Bonds has been based on estimates of the investment in real and depreciable personal property provided by the Developer.

3. It understands that the Issuer's collection of the TIF Revenues may be limited by operation of Indiana Code 6-1.1-20.6, which provides taxpayers with tax credits for property taxes attributable to different classes of property in an amount that exceeds certain percentages of the gross assessed value of the property. The Issuer may not increase its property tax levy or borrow money to make up any shortfall due to the application of this tax credit. It further understands that neither the Issuer nor the Westfield Redevelopment District has the authority to levy a tax to pay the principal of the Bonds.

4. It is purchasing the Bonds for investment for its own account and not with the present view of reselling or otherwise disposing of all or any part thereof, and that it will not sell, convey, pledge or otherwise transfer the Bonds without prior compliance with applicable registration and disclosure requirements of state and federal securities laws.

5. It has investigated the security for the Bonds, including the availability of the TIF Revenues and LIT Revenues, to its satisfaction, and it understands that the Bonds are payable from TIF Revenues and, to the extent TIF Revenues are not sufficient, the LIT Revenues.

6. It recognizes that the opinions it has received express the professional judgment of the attorneys participating in the transaction as to the legal issues addressed herein. It also recognizes that by rendering such opinions, the attorneys do not become insurers or guarantors of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to such transaction. Nor does the rendering of the opinions guarantee the outcome of any legal dispute that may arise out of the transaction.

7. It understands that interest on the Bonds is taxable for federal income tax purposes.

8. It understands that the Issuer has no continuing disclosure obligation on the Bonds.

The Bonds are issuable in registered form without coupons in the denominations of [\$5,000 and integral multiples thereof][\$100,000 or in any integral multiples of \$1,000 thereof]

This Bond is transferable by the registered owner hereof at the corporate trust office of the Registrar, upon surrender and cancellation of this bond and on presentation of a duly executed written instrument of transfer and thereupon a new Bond or Bonds of the same aggregate principal amount and maturity and in authorized denominations will be issued to the transferee or transferees in exchange therefor. This Bond may be exchanged upon surrender hereof at the corporate trust office of the Registrar, or at such office or offices as the Registrar may designate in writing to the registered owner, duly endorsed by the registered owner for the same aggregate principal amount of Bonds of the same maturity in authorized denominations as the registered owner may request.

The Issuer, the Trustee and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and interest due hereon and for all other purposes and neither the Issuer nor the Trustee nor the Paying Agent shall be affected by any notice to the contrary.

[The 20\_\_ Bonds maturing on or after \_\_\_\_\_ 1, 20\_\_, may be redeemed prior to maturity at the option of the Issuer, in whole or in part, in any order of maturity or maturities selected by the Issuer and by lot within any maturity, on any date not earlier than \_\_\_\_\_, 20\_\_, from any moneys made available for that purpose, at face value plus interest accrued to the date fixed for redemption and without any premium.]

[The 20\_\_ Bonds maturing on \_\_\_\_\_, 20\_\_, are subject to mandatory sinking fund redemption prior to maturity on the dates shown below, plus accrued interest and without premium:

Term Bond maturing \_\_\_\_\_ 1, 20\_\_

\* Final Maturity]

[The Trustee shall credit against the mandatory sinking fund requirement for any of the 20\_\_ Bonds maturing on \_\_\_\_\_, 20 (the "Term Bonds"), and corresponding mandatory sinking fund redemption obligation, in the order determined by the Issuer, any such Term Bonds which have previously been redeemed (otherwise than as a result of a previous mandatory sinking fund redemption requirement) or delivered to the Trustee, the Registrar or the Paying Agent for cancellation or purchased for cancellation by the Trustee and not theretofore applied as a credit against any redemption obligation. Each Term Bond so delivered or canceled shall be credited by the Trustee at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund redemption date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of Term Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Trustee, the Registrar or the Paying Agent shall only credit such Term Bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory sinking fund redemption date stated above.]

The 20\_\_ Bonds are subject to extraordinary redemption prior to maturity, without premium, from proceeds of insurance or a condemnation award received in certain circumstances relating to damage, destruction or condemnation of certain property owned by the Borrower and leased in exchange for the Lease Rental Payments.

If any of the 20\_\_ Bonds are called for redemption as aforesaid, unless waived by the Registered Owners, notice thereof identifying the 20\_\_ Bonds to be redeemed will be given by mailing a copy of the redemption notice by first class mail not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption to the Registered Owner of the 20\_\_ Bonds to be redeemed at the address shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein with respect to any registered 20\_\_ Bond, shall not affect the validity of any proceedings for the redemption of other 20\_\_ Bonds.

All 20\_\_ Bonds so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time, and shall no longer be protected by the Trust Indenture and shall not be deemed to be outstanding under the provisions of the Trust Indenture.

**The 20\_\_ Bonds , and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The 20\_\_ Bonds , as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and payable solely and only from the trust estate consisting of the funds and accounts held under the Trust Indenture, the Lease Rental Payments and the payments to be made on the Series 20\_\_ Note issued under the Loan Agreement pledged and assigned for their payment in accordance with the Trust Indenture (the “Trust Estate”). Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of, premium, if any, or the interest on this 20\_\_ Bond. The 20\_\_ Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of, premium, if any, or interest on the 20\_\_ Bonds . No covenant or agreement contained in the 20\_\_ Bonds or the Trust Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the City of Westfield Economic Development Commission (the “Commission”), the City of Westfield Redevelopment Commission (the “Redevelopment Commission”), the Borrower, or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Commission, the Redevelopment Commission, the Borrower, or the Issuer executing the 20\_\_ Bonds shall be liable personally on the 20\_\_ Bonds or be subject to any personal liability or accountability by reason of the issuance of the 20\_\_ Bonds .**

The holder of this 20\_\_ Bond shall have no right to enforce the provisions of the Trust Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Trust Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Trust Indenture. In certain

events, on the conditions, in the manner and with the effect set forth in the Trust Indenture, the principal of all the Bonds issued under the Trust Indenture and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of the Trust Indenture, or of any supplements thereto, may be made to the extent and in the circumstances permitted by the Trust Indenture. The Series 20\_\_ Note and the obligation to pay Lease Rental Payments shall not be subject to acceleration.

[A Continuing Disclosure Undertaking Agreement from the Issuer to each registered owner or holder of any 20\_\_ Bond, dated as of the date of initial issuance of the 20\_\_ Bonds (the "Agreement"), has been executed by the Issuer, a copy of which is available from the Issuer and the terms of which are incorporated herein by this reference. The Agreement contains certain promises of the Issuer to each registered owner or holder of any 20\_\_ Bond, including a promise to provide certain continuing disclosure. By its payment for and acceptance of this bond, the registered owner or holder of this 20\_\_ Bond assents to the Agreement and to the exchange of such payment and acceptance for such promises.]

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the laws of the State of Indiana and under the Trust Indenture precedent to and in the issuance of this 20\_\_ Bond, exist, have happened and have been performed, and that the issuance, authentication and delivery of this 20\_\_ Bond have been duly authorized by the Issuer.

This 20\_\_ Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Trust Indenture until the certificate of authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, the City of Westfield, Indiana, in Hamilton County, has caused this 20\_\_ Bond to be executed in its name and on its behalf by the manual or facsimile signature of the Mayor, and its corporate seal to be hereunto affixed manually or by facsimile and attested to by the manual or facsimile signature of its Clerk-Treasurer all as of \_\_\_\_\_, 20\_\_.

CITY OF WESTFIELD, INDIANA

By: \_\_\_\_\_  
Mayor

(SEAL)

Attest:

\_\_\_\_\_  
Clerk-Treasurer

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This 20\_\_ Bond is one of the 20\_\_ Bonds described in the within mentioned Trust Indenture.

[\_\_\_\_], as Trustee

By: \_\_\_\_\_  
Authorized Officer

### ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Please Print or Typewrite Name and Address) the within 20\_\_ Bond and all rights, title and interest thereon, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within 20\_\_ Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature of this assignment must correspond with the name of the registered owner as it appears upon the face of the within 20\_\_ Bond in every particular, without alteration or enlargement or any change whatever.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN. COM.                      as tenants in common

TEN. ENT.                     as tenants by the entireties

JT. TEN.                      as joint tenants with right of survivorship and not as tenants in common

UNIF. TRANS.  
MIN. ACT

\_\_\_\_\_  
(Cust.) Custodian \_\_\_\_\_  
(Minor)

Under Uniform Transfers to Minors Act of

\_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

(End of Bond Form)

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in order to secure the payment of the principal of and interest and premium, if any, on the Bonds to be issued under this Indenture according to their tenor, purport and effect, and in order to secure the performance and observance of all the covenants and conditions herein and in the Bonds contained, and in order to declare the terms and conditions upon which the Bonds are issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become holders thereof, and for and in consideration of the mutual covenants herein contained, of the acceptance by the Trustee of the trust hereby created, and of the purchase and acceptance of the Bonds by the holders or obligees thereof, the Issuer has executed and delivered this Indenture, and by these presents does hereby convey, grant, assign, pledge and grant a security interest in, unto the Trustee, its successor or successors and its or their assigns forever, with power of sale, all and singular, the property hereinafter described ("Trust Estate"):

#### GRANTING CLAUSE

##### DIVISION I

The Series 20\_\_ Note, which has been endorsed by the Issuer to the order of the Trustee and pledged by the Issuer to the Trustee, and all sums payable in respect of the indebtedness evidenced thereby;

##### DIVISION II

All right, title, and interest of the Issuer in and to the Loan Agreement (except the rights reserved to the Issuer), including the all right, title, and interest of the Issuer in the Lease Rental Payments; and

##### DIVISION III

All moneys and the Qualified Investments held by the Trustee from time to time in the Funds and Accounts created hereunder;

TO HAVE AND TO HOLD the same unto the Trustee, and its successor or successors and its or their assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, to secure the payment of the Bonds to be issued hereunder, and premium, if any, payable upon redemption or prepayment thereof, and the interest payable thereon, and to secure also the observance and performance of all the terms, provisions, covenants and conditions of this Indenture, and for the benefit and security of all and singular the holders of all Bonds issued hereunder, and it is hereby mutually covenanted and agreed that the terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become the holders thereof, and the trusts and conditions upon which the pledged moneys and revenues are to be held and disbursed, are as follows:

## **ARTICLE I.**

### **DEFINITIONS**

Section 1.1. Terms Defined. In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings unless the context or use indicates another or different meaning or intent:

“Additional Bonds” shall have the meaning assigned in Section 2.8 of this Indenture.

“Allocation Area” means the Union Square Allocation Area as established by the Redevelopment Commission in accordance with Indiana Code 36-7-14.

“Annual Fees” means the annual fees charged by the Trustee for services provided as the trustee and paying agent under this Indenture and fees related to monitoring the Tax Increment.

“Authorized Issuer Representative” means any of the [ ] of the Issuer or the President of the Redevelopment Commission.

“Authorized Borrower Representative” means the [President or Executive Director of the Redevelopment Commission], or such other individuals designated by a resolution of the Borrower.

[“Book-Entry System” means the book-entry system in Section 2.11 of this Indenture.]

“Bond Fund” means the fund established by the Issuer as set forth in Section 4.2 of this Indenture.

“Bond Issuance Expense Account” means the account established by the Issuer within the Construction Fund as set forth in Section 4.3 of this Indenture.

“Bonds” means any Bonds issued pursuant to this Indenture, including the Series 20\_\_ Bonds.

[“Bond Purchaser” means ].

“Borrower” means City of Westfield Building Corporation, an Indiana nonprofit corporation, and its permitted successors and assigns under the Loan Agreement.

“Commission” means the City of Westfield Economic Development Commission.

“Construction Account” means the account established by the Issuer within the Construction Fund as set forth in Section 4.3 of this Indenture.

“Construction Fund” means the fund established by the Issuer as set forth in Section 4.3 of this Indenture.

“Developer” means Union Square Plaza LLC, its affiliates or designees and its successors and assigns under the Development Agreement.

“Development Agreement” means the Development Agreement, dated as of [\_\_\_\_\_, 20\_\_], as amended, among the Issuer, the Redevelopment Commission, the Borrower and Developer, related to the Project, and all amendments and supplements thereto.

“Event of Default” means those events of default specified in and defined by Section 7.1 hereof.

“Financed Project Costs” means the following categorical costs of providing for an “economic development project” as defined and set forth in the Act:

(1) the “Bond Issuance Costs”, namely the costs, fees and expenses incurred or to be incurred by the Issuer and the Borrower in connection with the issuance and sale of the Series 20\_\_ Bonds, including placement or other financing fees (including applicable counsel fees), the fees and disbursements of Bond Counsel, fees of the Issuer’s financial advisor, the acceptance fee of the Trustee and the first year of the Trustee’s fees hereunder, Trustee counsel fees, application fees and expenses, publication costs, the filing and recording fees in connection with any filings or recording necessary under the Indenture or to perfect the lien thereof, the out-of-pocket costs of the Issuer, the fees and disbursements of counsel to the Borrower, the fees and disbursements of the Borrower’s accountants, the fees and disbursements of counsel to the Issuer, the costs of preparing or printing the Series 20\_\_ Bonds and the documentation supporting the issuance of the Series 20\_\_ Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred;

(2) the “Capitalized Interest Costs”, namely a portion of the interest on the Series 20\_\_ Bonds from the date of their original delivery through and including \_\_\_\_\_1, 20\_\_;

(3) the cost of insurance of all kinds that may be required or necessary in connection with the construction of the Financed Project Costs;

(4) all costs and expenses which Issuer or Borrower shall be required to pay, or advance under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto), for the construction of



the Project, including amounts required to be disbursed under the Funding Agreement; and

(5) any sums required to reimburse the Issuer, the Redevelopment Commission or Borrower for advances made by any of them for any of the above items or for any other costs incurred and for work done by any of them which are properly chargeable to the Project.

“Funding Agreement” means the Funding Agreement, dated as of [\_\_\_\_\_, 20\_\_], among the Issuer, the Borrower, the Redevelopment Commission and Developer.

“Funds and Accounts” shall mean the funds and accounts established in Article IV of this Indenture.

“Government Obligations” means (a) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, (b) obligations issued by a person controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of and premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (a) or (b) issued or held in book-entry form on the books of the Department of Treasury of the United States of America or Federal Reserve Bank), (c) certificates or receipts representing direct ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b), which obligations are held by a custodian in safekeeping on behalf of such certificates or receipts, or (d) senior, unsubordinated obligations of the Federal National Mortgage Association of Federal Home Loan Mortgage Corporation; provided that with respect to obligations of the sort described in clause (d), (i) such obligations are rated in the highest rating category for such obligation by any of Moody’s Investors Service (“Moody’s”), Standard & Poors Rating Group (“S&P”) or Fitch Ratings (“Fitch”) and (ii) in the event that any bonds are defeased with such obligations in whole or in part those Bonds shall be concurrently rated in the highest rating category for such obligations by any of Moody’s, S&P or Fitch.

“Indenture” means this instrument as originally executed or as it may from time to time be amended or supplemented pursuant to Article IX.

“Interest Payment Date” on the Series 20\_\_ Bonds means each January 1 and July 1 (whether or not a business day), commencing [\_\_\_\_\_]1, 20\_\_].

“Issuer” means the City of Westfield, Indiana, a municipal corporation organized and validly existing under the laws of the State of Indiana or any successor to its rights and obligations under the Loan Agreement and the Indenture.

“Lease” means the Lease Agreement, dated as of [\_\_\_\_\_, 20\_\_], as amended, among the Borrower, as lessor, and the Redevelopment Commission, as lessee, and all amendments and supplements thereto.

“Leased Premises” means the Premises as such term is defined in the Lease.

“Lease Rental Payments” means lease rental payments made by the Redevelopment Commission as a lessee under the Lease.

“LIT” means the certified shares component of additional revenue derived from the expenditure rate tax under Indiana Code 6-3.6, distributed by Hamilton County monthly.

“LIT Revenues” means LIT pledged by the Common Council of the City to the Lease Rental Payments, on a parity with the Prior LIT Obligations.

“Loan Agreement” means the Loan Agreement, dated as of [\_\_\_\_\_] 1, 20\_\_\_\_], between the Borrower and the Issuer and all amendments and supplements thereto.

“Note” or “Notes” shall have the meaning assigned in the Loan Agreement.

“Operation Fund” means the fund established by the Issuer as set forth in Section 4.6 of this Indenture.

“Opinion of Counsel” shall mean an opinion in writing signed by legal counsel who may be an employee of or counsel to the Borrower and who shall be satisfactory to the Trustee in its reasonable discretion.

“Original Issue Date” means [\_\_\_\_\_, 20\_\_\_\_].

“Outstanding” or “Bonds outstanding” means all Bonds which have been duly authenticated, and delivered by the Trustee under this Indenture, except:

(a) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Bonds for the redemption of which cash or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee, shall have been filed with the Trustee; and

(c) Bonds in lieu of which others have been authenticated under Section 2.9.

“Paying Agent” means the Trustee and any successor paying agent or co-paying agent.

“Prior LIT Obligations” means (i) Westfield Redevelopment Authority County Option Income Tax Lease Rental Revenue Bonds, Series 2016, dated September 29, 2016, currently outstanding in the aggregate principal amount of \$23,945,000, and (ii) Westfield Redevelopment Authority Local Income Tax Lease Rental Revenue Bonds, Series 2018, dated March 15, 2018, currently outstanding in the aggregate principal amount of \$23,785,000.

“Project” means certain economic development facilities consisting of the construction and equipping of a structured parking garage containing approximately 300 parking spaces, garage entrances and exits, ramps, elevators, stairwells, elevator lobbies and all related facilities; and all facades, exterior walls, roofs, foundations and other structural and aesthetic components thereof, together with all necessary appurtenances, related improvements and equipment as further described in the Development Agreement and located in the City.

“Qualified Investments” means to the extent permitted by the laws of the State (i) Government Obligations; (ii) bonds, debentures, participation certificates or notes issued by any of the following: Federal Farm Credit Banks, Federal Financing Bank, Federal Home Loan Banks, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (iii) certificates of deposit, time deposits and other interest-bearing deposit accounts with any banking institution, including the Trustee; (iv) any money market fund, sweep account, mutual fund or trust, including those for which the Trustee or an affiliate performs services for a fee, whether as custodian, transfer agent, investment advisor or otherwise Trustee or Paying Agent, and shall invest solely in a portfolio of obligations described in (i) or (ii) above or money market funds rated in the highest category by Moody’s or S&P, including those for which the Trustee or an affiliate performs services for a fee, whether as custodian, transfer agent, investment advisor or otherwise; (v) repurchase agreements with the Trustee or any of its affiliated banks or any other bank having a net worth of at least \$100,000,000 secured by a pledge and physical delivery (except in the case of securities issued in book-entry form, which shall be registered in the name of the Trustee) to the Trustee of obligations described in (i) or (ii) hereof; (vi) municipal obligations the interest on which would be excluded from the gross income of the owners thereof for federal tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended, if (a) rated in one of the three highest rating categories of either Moody’s or S&P, or, (b) if fully secured by securities guaranteed as to principal and interest by the United States of America; and (vii) stock of a Qualified Regulated Investment Company which invests solely in obligations described in (vi) above.

“Record Date” means the fifteenth day of the month preceding any Interest Payment Date.

“Redevelopment Commission” means the City of Westfield Redevelopment Commission.

“Requisite Bondholders” means the holders of 66 2/3% in aggregate principal amount of Bonds then Outstanding.

“Series 20\_\_ Bonds” means the City of Westfield, Indiana Taxable Economic Development Lease Rental Revenue Bonds, Series 20\_\_ (Union Square Project) in the aggregate principal amount of \$\_\_\_\_\_.

“Series 20\_\_ Note” shall have the meaning assigned in the Loan Agreement.

“Series 20\_\_ Debt Service Reserve Fund” shall mean the Series 20\_\_ Debt Service Reserve Fund established by the Issuer as set forth in Section 4.4 of this Indenture.

[“Series 20\_\_ Reserve Requirement” shall mean \$\_\_\_\_\_.]

“Tax Increment” means all real property tax proceeds attributable to the assessed valuation within the Allocation Area, as of each assessment date in excess of the base assessed value as described in Indiana Code 36-7-14-39(b)(1) (the incremental assessed value is multiplied by the then current property tax rate (per \$100 assessed value)).

“TIF Revenues” means 100% of the Tax Increment collected in the Allocation Area received by the Redevelopment Commission and pledged to the Issuer pursuant to a resolution adopted on [\_\_\_\_\_, 20\_\_\_\_], generated in the Allocation Area, minus Annual Fees, for a term not to exceed the date on which the Bonds are fully paid and no longer outstanding.

“Trust Estate” means the funds and accounts, the Series 20\_\_ Note, the Lease Rental Payments, and the other assets described in the Granting Clauses of this Indenture.

“Trustee” means [\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_], the party of the second part hereto, and any successor trustee or co-trustee.

Section 1.2. Rules of Interpretation. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) “This Indenture” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) Any terms not defined herein but defined in the Loan Agreement shall have the same meaning herein.

(f) The terms defined elsewhere in this Indenture shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Indenture:

Exhibit A: Disbursement Request

Exhibit B: Bond Issuance Costs.

(End of Article I)

## ARTICLE II.

### THE BONDS

Section 2.1. Authorized Amount of Series 20\_\_ Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The principal amount of the Series 20\_\_ Bonds (other than Bonds issued in substitution therefor pursuant to Section 2.9 hereof) that may be issued is hereby expressly limited to \$[12,250,000]. Additional Bonds may be issued as provided in Section 2.8 hereof.

Section 2.2. Issuance of Series 20\_\_ Bonds. The Series 20\_\_ Bonds shall be designated "City of Westfield, Indiana Taxable Economic Development Lease Rental Revenue Bonds, Series 20\_\_ (Union Square Project)." The Series 20\_\_ Bonds shall be originally issuable as fully registered Bonds without coupons in denominations of [\$5,000 and integral multiples thereof] [\$100,000 or in any integral multiples of \$1,000 thereof], and shall be lettered and numbered R-1 and upward. Interest on the Series 20\_\_ Bonds shall be paid to the owners of such Bonds determined as of the close of business of the Record Date next preceding each Interest Payment Date at the registered addresses of such owners as they shall appear on the registration books of the Trustee notwithstanding the cancellation of any such Bonds upon any exchange or transfer thereof subsequent to the Record Date and prior to such Interest Payment Date, except that, if and to the extent that there shall be a default in the payment of the interest due on such interest payment date, such defaulted interest shall be paid to the owners in whose name any such Bonds (or any Bond issued upon transfer or exchange thereof) are registered at the close of business of the Special Record Date next preceding the date of payment of such defaulted interest. The Special Record Date shall be the date established by the Trustee for the payment of defaulted interest. The Series 20\_\_ Bonds shall be dated as of the date of their delivery. Interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Interest on the Series 20\_\_ Bonds shall be payable on each January 1 and July 1, commencing on \_\_\_\_\_ 1, 20\_\_.

The Series 20\_\_ Bonds shall mature on the dates set forth below, beginning on \_\_\_\_ 1, 20\_\_, and ending on \_\_\_\_\_ 1, 20\_\_, in the amounts with interest at the rates set forth below:

<u>Payment Date</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Payment Date</u>	<u>Amount</u>	<u>Interest</u> <u>Rate</u>
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[The Series 20\_\_ Bonds maturing on \_\_\_\_\_ 1, 20\_\_ shall be the "Term Bonds" and the Term Bonds shall be subject to mandatory sinking fund redemption as set forth in Section 5.1(c).]

The Series 20\_\_ Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless such date of authentication shall be subsequent to a Record Date in which case they shall bear interest from the Interest Payment Date with respect to such Record Date, provided, however that if, as shown by the records of the Trustee, interest on the Series 20\_\_ Bonds shall be in default, Series 20\_\_ Bonds issued in exchange for Series 20\_\_ Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has

been paid in full on the Series 20\_\_ Bonds or, if no interest has been paid on the Series 20\_\_ Bonds, from the date of issuance and delivery of the Series 20\_\_ Bonds. Series 20\_\_ Bonds authenticated on or prior to [\_\_\_\_ 15, 20\_\_], shall bear interest from the date of delivery of the Series 20\_\_ Bonds.

[So long as the Series 20\_\_ Bonds are held by the Bond Purchaser, no presentation of the Bonds is required for such payments to be made to the Bond Purchaser, except that upon final payment, the Bonds shall be returned to the Paying Agent for destruction.

Section 2.3. Payment on Bonds. The interest on the Series 20\_\_ Bonds shall be payable by check or draft mailed one business day prior to the interest payment date, or by wire transfer of immediately available funds on the interest payment date to a registered owner of One Million Dollars (\$1,000,000) or more in aggregate principal amount who requests the same in writing to the Paying Agent at least five (5) business days prior to the applicable interest payment date, to the person in whose name each Series 20\_\_ Bond is registered on the fifteenth day of the month immediately preceding such interest payment date. The principal of the Series 20\_\_ Bonds shall be payable in lawful money of the United States of America, at the corporate trust operations office of the Paying Agent in \_\_\_\_\_, \_\_\_\_\_, or by wire transfer of immediately available funds to a registered owner of One Million Dollars (\$1,000,000) or more in aggregate principal amount who requests the same in writing to the Trustee at least five (5) business days prior to the applicable principal payment date.

Section 2.4. Execution; Limited Obligation. The Series 20\_\_ Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of the City Council President of the City and attested with the manual or the facsimile signature of its Clerk-Treasurer or Deputy Clerk-Treasurer and shall have impressed or printed thereon the corporate seal of the Issuer. Such facsimiles shall have the same force and effect as if such officer had manually signed each of the Series 20\_\_ Bonds. If any officer whose signature or facsimile signature shall appear on the Series 20\_\_ Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

**The Series 20\_\_ Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Series 20\_\_ Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and payable solely and only from the trust estate consisting of the funds and accounts held under the Indenture, the Lease Rental Payments and the payments to be made on the Series 20\_\_ Note issued under the Loan Agreement pledged and assigned for their payment in accordance with the Indenture ("Trust Estate"). Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of, premium, if any, or the interest on this Series 20\_\_ Bond. The Series 20\_\_ Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment**

**of the principal of, premium, if any, or interest on the Series 20\_\_ Bonds. No covenant or agreement contained in the Series 20\_\_ Bonds or the Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Commission, the Redevelopment Commission, the Borrower, or the Issuer in his or her individual capacity, and no member, director, officer, agent, attorney or employee of the Commission, the Redevelopment Commission, the Borrower, or the Issuer executing the Series 20\_\_ Bonds shall be liable personally on the Series 20\_\_ Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 20\_\_ Bonds.**

Section 2.5. Authentication. No Series 20\_\_ Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until the certificate of authentication on such Series 20\_\_ Bond substantially in the form hereinabove set forth shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Series 20\_\_ Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Series 20\_\_ Bond shall be deemed to have been executed by it if signed by an authorized signatory of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Series 20\_\_ Bonds issued hereunder.

Section 2.6. Form of Bonds. The Bonds issued under this Indenture shall be substantially in the form hereinabove set forth with such appropriate variations, omissions and insertions as are permitted or required by this Indenture or deemed necessary by the Trustee.

Section 2.7. Delivery of Series 20\_\_ Bonds. Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee the Series 20\_\_ Bonds in the aggregate principal amount of \$[\_\_\_\_\_]. The Trustee shall authenticate such Bonds and deliver them to the purchasers [Bond Purchaser] thereof upon receipt of:

- (1) A copy, duly certified by the Clerk-Treasurer of the Issuer, of the ordinance adopted and approved by the Issuer authorizing the execution and delivery of the Loan Agreement and this Indenture and the issuance of the Series 20\_\_ Bonds.
- (2) A copy, duly certified by the Secretary of the Redevelopment Commission, of each of the resolution approving the execution of the Lease.
- (3) Executed counterparts of the Loan Agreement, the Indenture and the Lease.
- (4) The Series 20\_\_ Note in the same principal amount as the principal amount of the Series 20\_\_ Bonds, duly executed by the Borrower and endorsed by the Issuer to the order of the Trustee.
- (5) A written request of the Issuer to the Trustee requesting the Trustee to authenticate, or cause to be authenticated, and deliver the Series 20\_\_ Bonds in the principal amount of \$[\_\_\_\_\_] to the purchasers thereof [Bond Purchaser].

The proceeds of the Series 20\_\_ Bonds, less any underwriter's discount shall be paid over to the Trustee and deposited to the credit of various Funds and Accounts as hereinafter provided under Section 3.1 hereof.

Section 2.8. Issuance of Additional Bonds. One or more series of Bonds in addition to the Series 20\_\_ Bonds (the "Additional Bonds"), may be authenticated and delivered from time to time for one or more of the purposes of (i) refunding all or a portion of one or more series of Bonds outstanding hereunder, if such Bonds may otherwise be refunded, and (ii) financing the cost or estimated cost of completing the Projects or of acquiring and/or constructing additional improvements to the Projects, and, in each case, obtaining additional funds to pay the costs to be incurred in connection with the issuance of such Additional Bonds, to establish reserves with respect thereto and to pay interest during the estimated construction period of completing the additional improvements, if any. Each series of Additional Bonds issued hereunder shall be equal in aggregate principal amount to the principal amount of the additional Note being then currently issued.

Prior to the delivery by the Issuer of any such Additional Bonds there shall be filed with the Trustee:

- (1) A supplement to this Indenture executed by the Issuer and the Trustee authorizing the issuance of such Additional Bonds, specifying the terms thereof, pledging and assigning the additional Note being then currently issued as security therefor and providing for the disposition of the proceeds of the sale thereof.
- (2) The supplement or amendment to the Loan Agreement and the other instruments, documents, certificates, and opinions referred to in Section 7.1 of the Loan Agreement.
- (3) The additional Note being then concurrently issued, made payable to the order of the Issuer, duly executed by the Borrower and endorsed by the Issuer to the order of the Trustee.
- (4) If necessary, a supplement or amendment to the Lease.
- (5) A report or a certificate prepared by an independent certified public accountant or an independent financial advisor selected by the Issuer supported by appropriate calculations, stating that the Additional Bonds can be amortized, along with the Series 20\_\_ Bonds, from Lease Rental Payments pursuant to the Lease.
- (6) A copy, duly certified by the Clerk-Treasurer of the Issuer, of the Bond Ordinance theretofore adopted and approved by the Issuer authorizing the execution and delivery of such supplemental indenture and such supplement to the Loan Agreement and the issuance of such Additional Bonds.



- (7) A written request of the Issuer to the Trustee to authenticate and deliver such Additional Bonds.
- (8) An opinion of bond counsel to the effect that (i) such supplement to this Indenture has been duly executed by the Issuer and constitutes the valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms; and (ii) the Additional Bonds have been duly and validly authorized and issued by the Issuer and constitute the valid and binding limited obligations of the Issuer enforceable against the Issuer in accordance with their terms. The opinion of bond counsel may be qualified as to such matters as are acceptable to the Issuer and the Trustee, and include, without limitation, customary exceptions as to bankruptcy, insolvency and other laws affecting creditors' rights generally and customary exceptions as to principles of equity.
- (9) Additional Bonds payable from either TIF Revenues or LIT Revenues, the requirements for such additional obligations contained in the resolution or ordinance pledging the TIF Revenues or LIT Revenues shall have been met.

Any Additional Bonds issued in accordance with the terms of this Section 2.8 shall be secured by this Indenture and shall be equally and ratably payable from all Notes issued under the Loan Agreement, but such Additional Bonds may bear such date or dates, such interest rate or rates, and with such maturities, redemption dates and premiums as may be agreed upon by the Issuer, at the direction of the Borrower, and the purchaser of such Additional Bonds.

Section 2.9. Mutilated, Lost, Stolen, or Destroyed Bonds. If any Series 20\_\_ Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Series 20\_\_ Bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Series 20\_\_ Bond, such mutilated Series 20\_\_ Bond shall first be surrendered to the Issuer, and in the case of any lost, stolen or destroyed Series 20\_\_ Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it.

If any such Series 20\_\_ Bond shall have matured, instead of issuing a duplicate Series 20\_\_ Bond the Issuer may pay the same without surrender thereof; provided, however, that in the case of a lost, stolen or destroyed Series 20\_\_ Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it. The Trustee may charge the holder or owner of such Series 20\_\_ Bond with their reasonable fees and expenses in this connection. Any Series 20\_\_ Bond issued pursuant to this Section 2.9 shall be deemed part of the original series of Series 20\_\_ Bonds in respect of which it was issued and an original additional contractual obligation of the Issuer.

Section 2.10. Registration and Exchange of Series 20\_\_ Bonds; Owners. The Issuer shall cause books for the registration and for the transfer of the Series 20\_\_ Bonds as provided in this Indenture to be kept by the Trustee which is hereby constituted and appointed the registrar of the Issuer. Upon surrender for transfer of any fully registered Series 20\_\_ Bond at the corporate trust operations office of the Trustee, duly endorsed by, or accompanied by a written instrument

or instruments of transfer in form satisfactory to the Trustee and duly executed by the registered owner or his attorney duly authorized in writing, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Series 20\_\_ Bond or Series 20\_\_ Bonds of the same series and the same maturity for a like aggregate principal amount. The execution by the Issuer of any fully registered Series 20\_\_ Bond without coupons of any denomination shall constitute full and due authorization of such denomination, and the Trustee shall thereby be authorized to authenticate and deliver such registered Series 20\_\_ Bond. The Trustee shall not be required to transfer or exchange any fully registered Series 20\_\_ Bond during the period between the Record Date and any interest payment date of such Series 20\_\_ Bond, nor to transfer or exchange any Series 20\_\_ Bond after the mailing of notice calling such Bond for redemption has been made, nor during a period of fifteen (15) days next preceding mailing of a notice of redemption of any Bonds.

As to any fully registered Series 20\_\_ Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal or interest thereon, shall be made only to or upon the order of the registered owner thereof or its legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 2.11. Book-Entry System. The Issuer may determine that the Bonds will be held by a central depository system pursuant to an agreement between the Issuer and The Depository Trust Company, and have transfers of the Bonds effected by book-entry on the books of the central depository system. The Bonds shall be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of The Depository Trust Company.

Notwithstanding any other provision hereof to the contrary, so long as any Series 20\_\_ Bond is registered in the name of CEDE & CO. as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Series 20\_\_ Bond and all notices with respect to such Series 20\_\_ Bond shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the Issuer to the Depository Trust Company.

With respect to the Bonds registered in the register kept by the Paying Agent in the name of CEDE & CO., as nominee of The Depository Trust Company, the Issuer and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")), of the Bonds with respect to (i) the accuracy of the records of The Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than The Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any Bondholder (including any Beneficial Owner) or any other person, other than The Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than The Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the Issuer to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to the Indenture. The Issuer and the Registrar and Paying Agent may treat as and deem The Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to Bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by Bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of The Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the Issuer's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by The Depository Trust Company to the Issuer of written notice to the effect that The Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the provisions herein with respect to consents, the words "CEDE & CO." in this Indenture shall refer to such new nominee of The Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO. as nominee of The Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to The Depository Trust Company as provided in a representation letter from the Issuer to The Depository Trust Company.

Upon receipt by the Issuer of written notice from The Depository Trust Company to the effect that The Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of The Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the Issuer kept by the Registrar in the name of CEDE & CO., as nominee of The Depository Trust Company, but may be registered in whatever name or names the Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of the Indenture.

If the Issuer determines that it is in the best interest of the Bondholders that they be able to obtain certificates for the fully registered Bonds, the Issuer may notify The Depository Trust Company and the Registrar, whereupon The Depository Trust Company will notify the Beneficial Owners of the availability through The Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by The Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever The Depository Trust Company requests the Issuer and the Registrar to do so, the Registrar and the Issuer will cooperate with The Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of a depository trust company, the Registrar shall cause the Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the Issuer indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to Bondholders by the Issuer or the Registrar with respect to any consent or other action to be taken by Bondholders, the Issuer or the Registrar, as the case may be, shall establish a record date for such consent or other action and give The Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of The Depository Trust Company or CEDE & CO. or any substitute nominee, the Issuer and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from The Depository Trust Company on behalf of such Beneficial Owners stating the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and The Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the Bondholders for purposes of this Indenture and the Issuer and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the Bondholders. Along with any such certificate or representation, the Registrar may request The Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

If the Book Entry System is no longer in effect, registered owners of Bonds may, upon surrender thereof at the principal corporate trust operations office of the Trustee with a written instrument of transfer satisfactory to the Trustee, exchange a Bond or Bonds for a Bond or Bonds of equal aggregate principal amount of the same maturity and interest rate of any authorized denominations. For every exchange or transfer of Bonds, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Trustee incurred in connection therewith (except any applicable tax, fee or other governmental charge) shall be paid by the Issuer. The Trustee shall not be obliged to make any transfer or exchange of any Bond called for redemption within thirty days of the redemption date.

(End of Article II)

## **ARTICLE III.**

### **APPLICATION OF SERIES 20\_\_ BONDS PROCEEDS**

Section 3.1. Deposit of Funds. The Issuer shall deposit with the Trustee all proceeds from the sale of the Series 20\_\_ Bonds, less the [underwriter's discount] in the amount of \$[\_\_\_\_], as follows: (i) funds in the amount of \$[\_\_\_\_] shall be deposited to the Construction Fund for further credit to (a) the Bond Issuance Expense Account of the Construction Fund in the amount of \$[\_\_\_\_]; (b) the Capitalized Interest Account of the Construction Fund in the amount of \$[\_\_\_\_]; and (c) the Construction Account of the Construction Fund in the amount of \$[\_\_\_\_]; and (ii) [the remaining funds] [cash on hand] in the amount of \$[\_\_\_\_] shall be deposited to the Series 20\_\_ Debt Service Reserve Fund].

(End of Article III)

## ARTICLE IV.

### REVENUE AND FUNDS

Section 4.1. Source of Payment of Bonds. The Bonds herein authorized and all payments to be made by the Issuer hereunder are not general obligations of the Issuer but are limited obligations payable solely from the Trust Estate as authorized by the Act and as provided herein. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of the Issuer or of any member, director, officer, agent, attorney or employee of the Issuer in his or her individual capacity, and neither the Issuer nor any member, director, officer, agent, attorney, or employee of the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 4.2. Bond Fund. The Trustee shall establish and maintain, so long as any of the Bonds are outstanding, a separate fund to be known as the "Bond Fund." Money in the Bond Fund shall be applied as provided in this Section 4.2.

There shall be deposited in the Bond Fund, as and when received, (i) all payments received pursuant to the Notes, including the required deposits of Lease Rental Payments pursuant to Section 4.5 hereof; (ii) all payments specified in Section 3.2 of the Loan Agreement; (iii) any amount remaining in the Construction Fund to be transferred to the Bond Fund pursuant to the Indenture upon acceleration of the maturity of the Series 20\_\_ Bonds; (iv) all interest and other income derived from investments of Bond Fund moneys as provided herein; and (v) all other moneys received by the Trustee under and pursuant to any of the provisions of the Loan Agreement which are required or which are accompanied by directions that such moneys are to be paid into the Bond Fund. The Issuer hereby covenants and agrees that so long as any of the Bonds issued hereunder are outstanding it will deposit, or cause to be paid to Trustee for deposit in the Bond Fund for its account, sufficient sums from revenues and receipts derived from the Notes and the Loan Agreement, including the Lease Rental Payments, promptly to meet and pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable. Nothing herein should be construed as requiring the Issuer to deposit or cause to be paid to Trustee for deposit in the Bond Fund, funds from any source other than receipts derived from the Notes, the Loan Agreement, and the Lease Rental Payments.

The Borrower shall immediately upon receipt transfer the Lease Rental Payments to the Trustee as set forth in Section 4.5. The Trustee is hereby directed to deposit into the Bond Fund from each Lease Rental Payment, an amount equal to the lesser of the following: (a) all of such rental payment; or (b) an amount which equals the sum of the principal and interest on the Bonds due on, before or within twenty (20) days after the date such Lease Rental Payment becomes due. Any portion of a rental payment remaining after such deposit shall be deposited by the Trustee in the Operation Fund.

Moneys in the Bond Fund shall be used by the Trustee to pay interest, premium, if any, and principal on the Bonds as they become due at maturity, redemption or upon acceleration. The Trustee shall transmit such funds to the Paying Agent for any series of Bonds in sufficient time to insure that such interest will be paid as it becomes due.

Section 4.3. Construction Fund. The Issuer shall establish with the Trustee a separate fund to be known as the Construction Fund, to the credit of which the deposits are to be made as required by Section 3.1 hereof. The Construction Fund shall consist of the Capitalized Interest Account, the Bond Issuance Expense Account and the Construction Account.

(a) The Trustee shall, without other or further authority than is hereby given, use all of the proceeds of the Series 20\_\_ Bonds from the Capitalized Interest Account, or if the Capitalized Interest Account is not sufficient, then from the Construction Account, to pay interest accruing on the Series 20\_\_ Bonds through and including \_\_\_\_\_ 1, 20\_\_.

(b) The Trustee shall use the funds deposited in the Bond Issuance Expense Account to pay the Bond Issuance Costs set forth in Exhibit B hereto, which Bond Issuance Costs shall be paid by check or wire transfer to the entities listed. Execution of this Indenture shall be authorization for these payments. Other Bond Issuance Costs shall be paid by the Trustee upon submission of a requisition signed by an Authorized Borrower Representative, in the form attached hereto as Exhibit A.

(c) Moneys on deposit in the Construction Account shall be paid out from time to time by the Trustee to or upon the order of the Borrower to pay for the Financed Project Costs. Upon receipt by the Trustee of a written request in the form attached hereto as Exhibit A signed by an Authorized Borrower Representative:

(A) stating that the costs of an aggregate amount set forth in such written request have been made or incurred and were necessary for the construction of the Project and were made or incurred in accordance with the construction contracts, plans and specifications, or purchase contracts therefor then in effect or that the amounts set forth in such written request are for allowable Financed Project Costs;

(B) stating that no part of the said costs was included in any written request previously filed with the Trustee under the provisions hereof;

(C) stating a recap of payees and the amount paid; and

(D) stating that such costs are appropriate for the expenditure of proceeds of the Bonds under the Act.

Upon exhaustion of all funds in the Construction Fund, the Construction Fund shall be closed. No affidavit of completion shall be required to be submitted hereunder. Any amounts remaining in the Construction Fund after completion of the Project shall be transferred in accordance with written direction received by the Trustee from an Authorized Borrower Representative.

Section 4.4. [Series 20\_\_ Debt Service Reserve Fund] The Trustee shall establish and maintain a separate fund to be known as the “Series 20\_\_ Bonds Debt Service Reserve Fund” for a period of one year following completion of the Project to allow for stabilization of TIF Revenues. Money in the Series 20\_\_ Debt Service Reserve Fund shall be applied as provided in this Section 4.4. On the date of delivery of the Series 20\_\_ Bonds, [proceeds thereof] [cash on hand] in the amount of \$\_\_\_\_\_ shall be deposited to the Series 20\_\_ Debt Service Reserve Fund to satisfy the Series 20\_\_ Reserve Requirement.

(a) The Trustee shall deposit in the Series 20\_\_ Debt Service Reserve Fund all moneys required to be deposited therein pursuant to this Indenture. The Trustee shall maintain the Series 20\_\_ Debt Service Reserve Fund and shall disburse the funds held in the Series 20\_\_ Debt Service Reserve Fund solely for the payment of interest on and principal of the Series 20\_\_ Bonds for a period of one year following completion of the Project, and only if moneys in the Bond Fund are insufficient to pay principal of and interest on the Series 20\_\_ Bonds after making all the transfers thereto required to be made from the Operation Fund. If moneys in the Series 20\_\_ Debt Service Reserve Fund are used to pay principal of or interest on any Series 20\_\_ Bonds, the depletion of the balance in the Series 20\_\_ Debt Service Reserve Fund shall not be restored. If moneys in the Series 20\_\_ Debt Service Reserve Fund shall exceed the Series 20\_\_ Reserve Requirement, such excess shall be transferred at least semiannually to the Bond Fund.

(b) Notwithstanding anything herein to the contrary, amounts on deposit in the Series 20\_\_ Debt Service Reserve Fund shall be applied solely to the payment of debt service on the Series 20\_\_ Bonds for a period of one year following completion of the Project.

The Issuer, upon the advice of its financial advisor, hereby finds that funding the Debt Service Reserve Fund is reasonably required and that the Series 20\_\_ Reserve Requirement is no larger than necessary to market the Bonds. The Issuer further finds that the Reserve Requirement is directly related to the Project because the Bonds could not be issued to fund the Project without the Debt Service Reserve Fund.

The debt service reserve requirement, if any, for any parity obligations shall be set forth in the resolution authorizing the party obligations.]

Section 4.5. Lease Rental Payments. On or before each December 15 and June 15, commencing on \_\_\_\_15, 20\_\_, the Borrower shall transfer the Lease Rental Payments received by the Borrower on or before such December 15 or June 15 to the Trustee, who shall deposit such Lease Rental Payments in the Bond Fund for the payment of the Series 20\_\_ Bonds on the next Interest Payment Date. The transfers to the Bond Fund shall serve as a credit against the Borrower’s obligations under the Series 20\_\_ Note and the Loan Agreement with respect to the Series 20\_\_ Bonds.

Section 4.6. Operation Fund. There is hereby established and created a fund designated as the Operation Fund. The Operation Fund shall be used only to pay necessary incidental expenses of the Issuer (e.g. Trustee’s fees, including Annual Fees, required audits, attorney’s fees, appraisals, meetings, expenses incurred in connection with any continuing disclosure obligations of the Issuer or the Borrower in relation to the Bonds), the payment of



principal of and interest on the Bonds upon redemption as authorized in Article V hereof or the purchase price of Bonds purchased as authorized by Section 4.7 hereof, and if the amount in the Bond Fund at any time is less than the required amount, the Trustee shall, without any further authorization, transfer funds from the Operation Fund to the Bond Fund in an amount sufficient to raise the amount in the Bond Fund to the required amount. Such action by the Trustee shall not constitute a waiver of any other right or remedy the Trustee may have under this Indenture. Incidental expenses shall be paid by the Trustee upon the presentation of an affidavit executed by an Authorized Issuer Representative stating the character of the expenditure, the amount thereof and to whom due, together with the statement of the creditor as to the amount owing, except for the payment of Trustee's fees which requires no such affidavit from an Authorized Issuer Representative.

Notwithstanding anything herein to the contrary, upon receipt by the Trustee of a Request for Release of Funds, as defined below, the Trustee shall as soon thereafter as practical release to the Issuer funds in the Operation Fund in accord with such Request for Release of Funds. For these purposes, a "Request for Release of Funds" means a written request made by the Issuer which (i) is signed by an Authorized Issuer Representative, (ii) sets forth the amount requested to be released from the Operation Fund to the Issuer, and (iii) includes a statement, accompanied by supporting schedules prepared by an accountant or firm of accountants which verify the statement, that the balance to be held in the Operation Fund immediately after such amount is released to the Issuer is expected to be sufficient to meet the known and anticipated payments and transfers to be satisfied from the Operation Fund in the then next succeeding eighteen months. The supporting schedules shall identify with particularity the anticipated sources and applications of funds. The statement and supporting schedules required by clause (iii) above shall not include anticipated investment earnings based on assumptions about reinvestment rates, but may include known investment earnings scheduled to be received on then current investments, and shall include any known or anticipated gain or loss from the disposition of investments. Notwithstanding the foregoing provisions of this paragraph, the Trustee shall not so release funds from the Operation Fund to the Issuer during any time that there exists an uncured or unwaived event of default hereunder (as defined in Article VII), or an event which with notice or lapse of time or both would become such an event of default, or if the Trustee determines, which determination may be in reliance upon an Opinion of Counsel, that the information set forth in the Request for Release of Funds (including the supporting schedules) is not reasonably consistent with the books and records of the Trustee or is otherwise not accurate or appropriate.

Section 4.7. Redemption and Purchase of Bonds. Whenever the amounts contained in the Bond Fund and Operation Fund are sufficient, together with any other funds deposited with the Trustee by the Issuer, to redeem, upon the next redemption date, all Bonds secured thereby then outstanding, the Trustee shall apply the amounts in such Funds to the redemption of such Bonds pursuant to Article V hereof. At the written request of an Authorized Issuer Representative delivered to the Trustee, the Trustee may remove funds from the Operation Fund to be used for the redemption of Bonds, or for the purchase of Bonds.

Section 4.8. Trust Funds. All moneys and securities received by the Trustee under the provisions of this Indenture, shall be trust funds under the terms hereof and shall not be subject

to lien or attachment of any creditor of the Issuer or of the Borrower. Such moneys shall be held in trust and applied in accordance with the provisions of this Indenture.

Section 4.9. Investment. Moneys on deposit in the Funds established in this Article IV hereof shall be invested as provided in Section 6.8 hereof.

(End of Article IV)

## ARTICLE V.

### REDEMPTION OF SERIES 20\_\_ BONDS BEFORE MATURITY

Section 5.1. Redemption Dates and Prices. (a) [The Issuer shall have the right, at its option, to redeem, according to the procedure hereinafter provided, the Series 20\_\_ Bonds maturing on or after \_\_\_\_1, 20\_\_, in whole or in part, in any order of maturity or maturities selected by the Issuer and by lot within any maturity, on any date not earlier than January 1, 2029, at face value, plus interest accrued to the date fixed for redemption and without premium.]

(b) The Series 20\_\_ Bonds are subject to extraordinary redemption prior to maturity, without premium, from proceeds of condemnation in certain circumstances as described in Section 6.10 and 6.11 hereof.

(c) [From moneys held in the Bond Fund, the Series 20\_\_ Bonds maturing on \_\_\_\_1, 20\_\_, are subject to mandatory sinking fund redemption prior to maturity on the dates shown below, plus accrued interest and without premium:

Term Bond maturing \_\_\_\_1, 20\_\_

Date

Amount

\* Final Maturity

So long as the Series \_\_ Bonds are held by the Bond Purchaser, the Series 20\_\_ Bonds do not need to be presented for payment upon mandatory sinking fund redemption.

The Trustee shall credit against the mandatory sinking fund requirement for any Term Bonds, and corresponding mandatory sinking fund redemption obligation, in the order determined by the Issuer, any such Term Bonds which have previously been redeemed (otherwise than as a result of a previous mandatory sinking fund redemption requirement) or delivered to the Trustee, the Registrar or the Paying Agent for cancellation or purchased for cancellation by the Trustee and not theretofore applied as a credit against any redemption obligation. Each Term Bond so delivered or canceled shall be credited by the Trustee at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund redemption date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of Term Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Trustee, the Registrar or the Paying Agent shall only credit such Term Bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory sinking fund redemption date stated above.]

Section 5.2. Notice to Trustee. To evidence its intention to exercise the right of redemption of any Series 20\_\_ Bonds, the Issuer shall, not less than forty-five (45) days prior to the date selected for redemption, file with the Trustee written notice of its intention to redeem, designating the date fixed for redemption, and if less than all of the outstanding Series 20\_\_ Bonds are to be redeemed stating the aggregate principal amount of Bonds which the Issuer

desires to redeem. No failure or defect in such notice by the Issuer to the Trustee shall affect the validity of the redemption of any Series 20\_\_ Bonds.

Section 5.3. Notice to Bondholders. In the case of redemption of Series 20\_\_ Bonds pursuant to Section 5.1 hereof, unless waived by the Registered Owners of the Series 20\_\_ Bonds to be redeemed, notice of the call for any such redemption identifying the Series 20\_\_ Bonds, or portions of fully registered Series 20\_\_ Bonds, to be redeemed shall be given by mailing a copy of the redemption notice by first class mail not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption to the registered Owner of each Series 20\_\_ Bond to be redeemed at the address shown on the registration books. Such notice of redemption shall specify [the CUSIP number and,] in the event of a partial redemption the Series 20\_\_ Bond numbers and called amounts of each Series 20\_\_ Bond, the redemption date, redemption price, interest rate, maturity date and the name and address of the Trustee and the Paying Agent; provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any such registered Series 20\_\_ Bond shall not affect the validity of any proceedings for the redemption of other Series 20\_\_ Bonds.

On and after the redemption date specified in the aforesaid notice, such Series 20\_\_ Bonds, or portions thereof, thus called shall not bear interest, shall no longer be protected by this Indenture and shall not be deemed to be outstanding under the provisions of this Indenture, and the holders thereof shall have the right to receive only the redemption price thereof plus accrued interest thereon to the date fixed for redemption.

Notice of any redemption hereunder required to be given to the Owners with respect to the Series 20\_\_ Bonds held under a book-entry system shall be given by the Trustee only to the Depository, or its nominee, as the Holder of such Series 20\_\_ Bonds.

Section 5.4. Cancellation. All Series 20\_\_ Bonds which have been redeemed in whole shall be canceled, shall not be reissued and shall be destroyed by the Trustee in accordance with the Trustee's destruction policy then in effect.

Section 5.5. Redemption Payments. Prior to the date fixed for redemption in whole, funds shall be deposited with Trustee to pay, and Trustee is hereby authorized and directed to apply such funds to the payment of the Series 20\_\_ Bonds or portions thereof called, together with accrued interest thereon to the redemption date. Upon the giving of notice and the deposit of funds for redemption, interest on the Series 20\_\_ Bonds thus called shall no longer accrue after the date fixed for redemption. No payment shall be made by the Paying Agent upon any Series 20\_\_ Bond until such Series 20\_\_ Bond shall have been delivered for payment or cancellation or the Trustee shall have received the items required by Section 2.9 hereof with respect to any mutilated, lost, stolen or destroyed Series 20\_\_ Bond.

Section 5.6. Partial Redemption of Bonds. If fewer than all of the Series 20\_\_ Bonds at the time outstanding are to be called for redemption, the maturities of Series 20\_\_ Bonds or portions thereof to be redeemed shall be selected by the Trustee at the direction of the Issuer. If fewer than all of the Series 20\_\_ Bonds within a maturity are to be redeemed, the Trustee shall select by lot (meaning also random selection by computer) in such manner as the Trustee, in its discretion, may determine, the Series 20\_\_ Bonds or portions of Series 20\_\_ Bonds within such

maturity that shall be redeemed. The Trustee shall call for redemption in accordance with the foregoing provisions as many Series 20\_\_ Bonds or portions thereof as will, as nearly as practicable, exhaust the moneys available therefor. Particular Series 20\_\_ Bonds or portions thereof shall be redeemed only in the minimum principal amount of [\$5,000 or integral multiples thereof][[\$100,000 or in any integral multiples of \$1,000 thereof]].

If less than the entire principal amount of any registered Series 20\_\_ Bond then outstanding is called for redemption, then upon notice of redemption given as provided in Section 5.3 hereof, the Owner of such registered Series 20\_\_ Bond shall forthwith surrender such Series 20\_\_ Bond to the Paying Agent in exchange for (a) payment of the redemption price of, plus accrued interest on the principal amount called for redemption and (b) a new Series 20\_\_ Bond or Series 20\_\_ Bonds of like series in an aggregate principal amount equal to the unredeemed balance of the principal amount of such registered Series 20\_\_ Bond, which shall be issued without charge therefor; provided that so long as the Series 20\_\_ Bonds are held in a Book-Entry-System with a depository, any such Series 20\_\_ Bonds called for partial redemption do not need to be presented for payment of principal.

(End of Article V)

## ARTICLE VI.

### GENERAL COVENANTS

Section 6.1. Payment of Principal and Interest. The Issuer covenants that it will promptly pay the principal of, premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. The principal, interest and premium, if any, on the Bonds are payable solely and only from the trust estate consisting of the funds and accounts held under this Indenture, the Lease Rental Payments, and the payments to be made on the Note which payments are hereby specifically pledged and assigned to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or in this Indenture should be considered as pledging any other funds or assets of the Issuer. **The Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from the trust estate consisting of the funds and accounts held under this Indenture, the Lease Rental Payments and the payments to be made on the Notes issued under the Loan Agreement pledged and assigned for their payment in accordance with the Indenture. Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of, premium, if any, or interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission, the Borrower, or the Issuer in his or her individual capacity, no member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission, the Borrower, or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.**

Section 6.2. Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of its members pertaining thereto. The Issuer represents that it is duly authorized under the constitution and laws of the State of Indiana to issue the Bonds authorized hereby and to execute this Indenture, and to pledge and assign the Series 20\_\_ Note, pledge and assign the Lease Rental Revenues, and assign the Loan Agreement in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof, subject to bankruptcy, insolvency, reorganization, moratorium

and other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights generally and subject to the valid exercise of the constitutional powers of the Issuer, the State of Indiana and the United States of America.

Section 6.3. Ownership; Instruments of Further Assurance. The Issuer represents that at the time of the pledge and assignment thereof it will lawfully own the Series 20\_\_ Note and that such pledge and assignment and the assignment of the Loan Agreement to the Trustee hereby made will be valid and lawful. The Issuer covenants that it will defend the title to the Series 20\_\_ Note and its interest in the Loan Agreement to the Trustee, for the benefit of the holders and owners of the Bonds against the claims and demands of all persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto the Trustee, the Series 20\_\_ Note, the Loan Agreement and all payments thereon and thereunder pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds.

Section 6.4. Filing of Indenture, Loan Agreement and Security Instruments. The Issuer, upon the written direction and at the sole expense of the Borrower, shall cause this Indenture, the Loan Agreement and all supplements thereto as well as such other security instruments, financing statements and all supplements thereto and other instruments as may be required from time to time to be filed in such manner and in such places as may be required by law in order to fully preserve and protect the lien hereof and the security of the holders and owners of the Bonds and the rights of the Trustee hereunder. This Section 6.4 shall impose no duty to record or file the instruments noted above where filing or recordation is not required by law in order to perfect a security interest. Continuation of financing statements may be filed without consent of the debtor parties thereto. The expenses related to the filing of any continuation of a financing statement shall be paid by the Borrower.

Section 6.5. Leased Premises. The Issuer covenants that it will cause the Borrower to maintain, or cause to be maintained, the Leased Premises in good working condition for the uses for which the Leased Premises are intended.

Section 6.6. List of Bondholders. The Trustee will keep on file at the principal office of the Trustee a list of names and addresses of the holders of all Bonds. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the Borrower or by holders and/or owners (or a designated representative thereof) of 25% or more in principal amount of Bonds then outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

Section 6.7. Rights Under Loan Agreement. The Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Borrower under and pursuant to the Loan Agreement for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder.

Section 6.8. Investment of Funds. Moneys in the Funds established hereunder may be invested in Qualified Investments to the extent and in the manner provided for in Section 3.7 of the Loan Agreement. The Trustee shall not be liable or responsible for any loss resulting from any such investment. The interest accruing thereon and any profit realized from such investments shall be credited, and any loss resulting from such investments shall be charged to the fund in which the money was deposited.

Section 6.9. Non-presentment of Bonds. If any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, if funds sufficient to pay any such Bond shall have been made available to Paying Agent for the benefit of the holder or holders thereof, all liability of Issuer to the holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of Paying Agent to hold such funds for five (5) years without liability for interest thereon, for the benefit of the holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond.

Any moneys so deposited with and held by the Paying Agent not so applied to the payment of Bonds within five (5) years after the date on which the same shall become due shall be escheated as required by law.

Section 6.10. Insurance on Leased Premises. (a) Pursuant to Section 3.3 of the Loan Agreement, the Borrower covenants that it will maintain or cause to be maintained certain insurance with respect to the Leased Premises. In case the Borrower at any time refuses, neglects, or fails to obtain such certificate or to effect insurance as set forth above, the Trustee may, in its discretion, procure such certificate or insurance, and all moneys paid by the Trustee for such certificate or insurance, together with interest thereon at the highest rate of interest on any of the Bonds when sold, whether or not then outstanding, shall be repaid by the Borrower upon demand, and shall constitute an additional indebtedness of the Borrower secured by the lien of this Indenture, prior and paramount to the lien hereunder of said Bonds and interest thereon. The Trustee, however, shall not be obligated to effect such insurance unless it determines to do so and is fully indemnified against the expense thereof and furnished with means therefor.

(b) Subject to the terms of the Lease and of Section 3.4 of the Loan Agreement, the proceeds of such insurance (other than rental value insurance received by the Trustee which represents lease rental payments under the Lease) received by the Trustee shall be applied to the repair, replacement or reconstruction of the damaged or destroyed property in a manner determined by the Trustee, except that the Trustee may release such proceeds, or a part thereof, upon receipt of a certification from the Borrower that repairs, replacements or reconstructions have been made and the costs of such repairs, replacements or reconstructions has been paid.

(c) In the event the Borrower does not commence to repair, replace or reconstruct the Leased Premises so damaged or destroyed as contemplated by the Lease, within ninety (90) days after any such damage or destruction, or the Borrower, having commenced such work of repair, replacement or reconstruction, abandons or fails diligently to prosecute the same, the Trustee may, in its discretion, make or complete such repairs, replacements or reconstructions, and if it shall elect to do so, may enter upon said premises to any extent necessary for the



accomplishment of such purposes, provided, nothing contained herein shall obligate the Trustee to make or complete any such repairs, replacements or reconstructions, and provided further, the Trustee may not make or complete such repairs, replacements or reconstructions if the Issuer has instructed the Borrower not to undertake such work in accordance with the Lease.

(d) In case the Borrower neglects, fails or refuses to proceed forthwith in good faith with the repair, replacement or reconstruction of the Leased Premises which has been so damaged or destroyed, and such negligence, failure or refusal continues for one hundred twenty (120) days, upon receipt of the insurance moneys, the Trustee shall (unless the Trustee proceeds to make the repairs, replacements or reconstructions of the destroyed or damaged property as above provided) apply such proceeds in the following manner:

(i) If the proceeds are sufficient to redeem all of the then outstanding Bonds, the Trustee shall apply the proceeds to the redemption of such Bonds at any time, in the manner provided in Article V of this Indenture but without premium or penalty and without regard to whether the Bonds are then subject to optional redemption, and with the same force and effect as if such redemption had been made at the option of the Borrower.

(2) If the proceeds are not sufficient to redeem all of the then outstanding Bonds, the Trustee shall apply the proceeds to the partial redemption of outstanding Bonds at any time, in the manner provided in Article V of this Indenture, without premium or penalty and without regard to whether the Bonds are then subject to optional redemption.

Any redemption of the Bonds shall be accomplished such that the Lease Rental Payments received from the remaining Leased Premises which have not been so damaged or destroyed shall be sufficient to pay the principal of and interest on the Bonds which have not been redeemed pursuant to this Section 6.10(d), as certified in writing to the Trustee by an Authorized Issuer Representative and Authorized Borrower Representative.

Section 6.11. Condemnation. In the event all or part of the Leased Premises is taken by exercise of the power of eminent domain and the Developer and the Borrower fail to proceed to replace or reconstruct the Leased Premises, the net proceeds of any condemnation award shall be deposited with the Trustee and disbursed in the same manner that insurance proceeds are disbursed pursuant to Section 6.10 hereof.

(End of Article VI)

## ARTICLE VII.

### DEFAULTS AND REMEDIES

Section 7.1. Events of Default. Each of the following events is hereby declared an “event of default,” that is to say, if:

(a) payment of any principal or interest payable on the Bonds shall not be made when the same is due and payable, whether at the stated maturity thereof, or upon proceedings for the redemption thereof, or upon the maturity thereof by acceleration as hereinafter provided; or

(b) any event of default as defined in Section 5.1 of the Loan Agreement shall occur and be continuing; or

(c) the Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture or any agreement supplemental hereof on the part of the Issuer to be performed, and such default shall continue for sixty (60) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer and the Borrower by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the holders of all of the Bonds then outstanding hereunder; or

(d) the Issuer shall fail to apply collected Lease Rental Payments as required by Article IV of this Indenture.

Section 7.2. Acceleration. Upon the happening of any event of default specified in Section 7.1 and the continuance of the same for the period, if any, specified in that Section, the Trustee, by notice in writing delivered to the Issuer and the Borrower, shall declare the entire unpaid principal amount of the Bonds then outstanding, and the interest accrued thereon, to be immediately due and payable. The Redevelopment Commission’s obligation to pay Lease Rental Payments shall not be subject to acceleration.

Section 7.3. Remedies; Rights of Bondholders.

(1) If an event of default occurs, the Trustee may pursue any available remedy by suit at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Bonds then outstanding, to enforce any obligations of the Issuer hereunder, and of the Borrower under the Loan Agreement, the Notes and any additional notes.

(2) Upon the occurrence of an event of default, and if directed so to do by the Requisite Bondholders and indemnified as provided in Section 8.1 hereof, the Trustee shall be obliged to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders.

(3) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the

Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute.

(4) No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver of any event of default or acquiescence therein, and every such right and power may be exercised from time to time as may be deemed expedient.

(5) No waiver of any event of default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent event of default or shall impair any rights or remedies consequent thereon.

Section 7.4. Right of Bondholders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, Requisite Bondholders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and this Indenture, and provided that the Trustee is obligated to pursue its remedies under the provisions of Section 7.2 hereof before any other remedies are sought.

Section 7.5. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the outstanding fees, expenses, liabilities and advances incurred or made by the Trustee or the Issuer, be deposited in the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest, and if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discriminations or privilege; and

Second: To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become due, and if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

Third: To the payment of the balance, if any, to the Borrower or its successors or assigns, upon the written request of the Borrower, or to whomsoever may be lawfully entitled to receive the same upon its written request, or as any court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over any other installment of interest, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of subsection (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (a) of this Section.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 7.6. Remedies Vested In Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment shall, subject to the provisions of Section 7.5 hereof, be for the equal benefit of the holders of the outstanding Bonds.

Section 7.7. Rights and Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in subsection (g) of Section 8.1, or of which by said subsection it is deemed to have notice, nor unless also such default shall have become an event of default and Requisite Bondholders shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also they have offered to the Trustee

indemnity as provided in Section 8.1 hereof, nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his, or their own name or names. Such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the holders of all Bonds then outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondholder to enforce the covenants of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective holders thereof at the time, place, from the source and in the manner in said Bonds expressed.

Section 7.8. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Borrower and the Trustee shall be restored to their former positions and rights hereunder, respectively, with respect to the Trust Estate, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 7.9. Waivers of Events of Default. The Trustee may in its discretion waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds, and shall do so upon the written request of the holders of (1) all the Bonds then outstanding in respect of which default in the payment of principal and/or premium, if any, and/or interest exists, or (2) all Bonds then outstanding in the case of any other default; provided, however, that there shall not be waived (a) any event of default in the payment of the principal of any outstanding Bonds at the date of maturity specified therein, or (b) any default in the payment when due of the interest on any such Bonds unless prior to such waiver or rescission, arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal and premium, if any, when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon. In taking any actions hereunder, the Trustee shall be entitled to indemnity satisfactory to it from the holders of the Bonds.

(End of Article VII)

## **ARTICLE VIII.**

### **THE TRUSTEE AND PAYING AGENT**

Section 8.1. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts. No implied covenants or obligations shall be read into this Indenture against the Trustee.

(a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or if appointed through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Borrower). The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or in any offering document related to the Bonds or for insuring the property herein conveyed or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the property herein conveyed or otherwise as to the maintenance of the security hereof; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Borrower under the Loan Agreement; but the Trustee may require of the Issuer or the Borrower full information and advice as to the performance of the covenants, conditions and agreements aforesaid as to the condition of the property herein conveyed. The Trustee shall have no obligation to perform any of the duties of the Issuer under the Loan Agreement, and the Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with the provisions of this Indenture.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated by it or the Paying Agent or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer or the Borrower by its duly authorized officers as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (g) of this Section, or of which said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Issuer or the Borrower under its seal to the effect that an ordinance or resolution in the form therein set forth has been adopted by the Issuer or the Borrower as conclusive evidence that such ordinance or resolution has been duly adopted, and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct; provided, however, that the provisions of this subsection shall not affect the duties of the Trustee hereunder, including the provisions of Article VII hereof.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any event of default hereunder (other than payment of the principal and interest on the Bonds) unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the holders of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the principal corporate trust office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

(h) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the Trust Estate.

(i) At any and all reasonable times and upon reasonable prior written notice, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect the Trust Estate, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking any action under this Section 8.1 the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its gross negligence or willful misconduct in connection with any action so taken. Such indemnity shall survive the termination of this Indenture. Except as otherwise specifically stated in this Indenture, the Issuer shall provide at its expense any indemnity hereunder requested by the Trustee.

(m) All moneys received by the Trustee or the Paying Agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

(n) If any event of default under this Indenture which the Trustee has knowledge of shall have occurred and be continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care as a prudent man would exercise or use in the circumstances in the conduct of his own affairs.

The Trustee may refuse to perform any duty or exercise any right or power which would require it to expend its own funds or risk any liability if it shall reasonably believe that repayment of such funds or adequate indemnity against such risk is not reasonably assured to it.

The Trustee shall not be accountable for the Issuer's or Borrower's use of the proceeds from the Bonds.

The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, except for any information provided by the Trustee, and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Indenture and delivered using Electronic Means; provided, however, that the Issuer shall provide to the Trustee an incumbency certificate listing officer with the authority to provide such Instructions ("Authorized Officers") and containing specimen signature of such Authorized Officer, which incumbency certificate shall be amended by the Issuer whenever a person is to be added or deleted from the listing. If the Issuer elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Issuer understands and agrees that the Trustee cannot determine the identity of the actual sender of such instructions and that the Trustee shall conclusively presume that direction that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Issuer shall be responsible for ensuring that only Authorized Officer transmit such instructions to the Trustee and that the Issuer and all Authorized Officer are solely responsible to safeguard that use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys



upon receipt by the Issuer. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written Instruction. The Issuer agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Issuer; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

Section 8.2. Fees, Charges and Expenses of Trustee and Paying Agent. The Trustee and Paying Agent shall be entitled to payment and/or reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee or Paying Agent in connection with such services as provided herein and in the Loan Agreement. Upon an event of default, but only upon an event of default, the Trustee shall have a right of payment prior to payment on account of interest or principal of, or premium, if any, on any Bond for the foregoing advances, fees, costs and expenses incurred. In the event of bankruptcy of the Issuer, any fees and expenses of the Trustee shall constitute administrative expenses.

Section 8.3. Notice to Bondholders if Default Occurs. If an event of default occurs of which the Trustee is by subsection (g) of Section 8.1 hereof required to take notice or if notice of an event of default be given as in said subsection (g) provided, then the Trustee shall give written notice thereof by registered or certified mail to the last known holders of all Bonds then outstanding shown by the list of Bondholders required by the terms of this Indenture to be kept at the office of the Trustee.

Section 8.4. Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of holders of the Bonds, the Trustee may intervene on behalf of Bondholders and, subject to the provisions of Section 8.1(l), shall do so if requested in writing by the owners of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 8.5. Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or

transfer to which it is a party, ipso facto, shall be and become successor Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 8.6. Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days' written notice to the Issuer and the Borrower and by registered or certified mail to each registered owner of Bonds then outstanding and to each holder of Bonds as shown by the list of Bondholders required by this Indenture to be kept at the office of the Trustee, and such resignation shall take effect at the end of such thirty (30) days, or upon the earlier appointment of a successor Trustee by the Bondholders or by the Issuer. Such notice to the Issuer and the Borrower may be served personally or sent by registered or certified mail.

Section 8.7. Removal of the Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee signed by (i) the Issuer if no event of default has occurred and is continuing unremedied or unwaived; or (ii) the Requisite Bondholders. All fees and expenses due and owing to the Trustee, including counsel fees, shall be paid prior to the effectiveness of any removal.

Section 8.8. Appointment of Successor Trustee by the Bondholders; Temporary Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the owners of a majority in aggregate principal amount of Bonds then outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys-in-fact, duly authorized; provided, nevertheless, that in case of such vacancy, the Issuer, by an instrument executed by one of its duly authorized officers, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders. If a successor Trustee has not been appointed within thirty (30) days of the notice of resignation or removal of the Trustee, the Trustee may appoint a successor or may petition a court of competent jurisdiction for the appointment of a successor, and any such action of a court shall be binding upon the parties. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank, having a reported capital and surplus of not less than One Hundred Million Dollars (\$100,000,000) if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 8.9. Concerning Any Successor Trustees. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Borrower an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights,

powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article shall be filed by the successor Trustee in each office, if any, where the Indenture shall have been filed.

Section 8.10. Trustee Protected in Relying Upon Resolutions, etc. Subject to the conditions contained herein, the resolutions, ordinances, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

Section 8.11. Appointment of Paying Agent, Registrar and Transfer Agent; Resignation or Removal of Paying Agent, Registrar or Transfer Agent. The Trustee is hereby appointed “Paying Agent”, “Registrar” and “Transfer Agent” under this Indenture. Any Paying Agent, Registrar or Transfer Agent may at any time resign and be discharged of the duties and obligations created by this instrument and any supplemental indenture by giving at least sixty (60) days’ written notice to the Issuer, the Borrower and the Trustee. Any Paying Agent, Registrar or Transfer Agent may be removed at any time by an instrument, filed with such Paying Agent, Registrar or Transfer Agent and the Trustee and signed by the Issuer and the Borrower. Any successor Paying Agent, Registrar or Transfer Agent shall be appointed by the Issuer at the direction of the Borrower and shall be a bank or trust company duly organized under the laws of any state of the United States or a national banking association, in each case having a capital stock and surplus aggregating at least One Hundred Million Dollars (\$100,000,000), willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

In the event of the resignation or removal of any Paying Agent, Registrar or Transfer Agent, such Paying Agent, Registrar or Transfer Agent shall pay over, assign and deliver any moneys or securities held by it as Paying Agent, Registrar or Transfer Agent to its successors, or if there is no successor, to the Trustee.

Section 8.12. Indemnification. To the extent permitted by law, the Issuer hereby agrees to indemnify and save harmless the Trustee from all losses, liabilities, costs and expenses, including attorney fees and expenses, which may be incurred by it as a result of its acceptance of or arising from the performance of its duties hereunder, unless such losses, liabilities, costs and expenses shall have been finally adjudicated to have resulted from the gross negligence or willful misconduct of the Trustee, and such indemnification shall survive its resignation or removal of the Trustee or the defeasance of this Indenture.

(End of Article VIII)

## ARTICLE IX.

### SUPPLEMENTAL INDENTURES

Section 9.1. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may without the consent of, or notice to, any of the Bondholders, enter into an indenture or indentures supplemental to this Indenture, as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (c) To subject to this Indenture additional security, revenues, properties or collateral;  
or
- (d) To make any other change in this Indenture which, in the judgment of the Trustee, is not to the material prejudice of the Trustee, the Borrower, the Issuer or the holders of the Bonds; or
- (e) To modify, amend or supplement the Indenture in such manner as required to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect, and, if they so determine, to add to the Indenture such other terms, conditions and provisions as may be required by said Trust Indenture Act of 1939, as amended, or similar federal statute.
- (f) To issue Additional Bonds in accordance with the provisions of Section 2.8 hereof.

Section 9.2. Supplemental Indentures Requiring Consent of Bondholders. Exclusive of supplemental indentures covered by Section 9.1 hereof, and subject to the terms and provisions contained in this Section, and not otherwise, the Requisite Bondholders shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided however, that nothing in this section contained shall permit or be construed as permitting (except as otherwise permitted in this Indenture) (a) an extension of the stated maturity or reduction in the principal amount of, or reduction in the rate or extension of the time of paying of interest on, or reduction of any premium payable on the redemption of, any Bonds, without the consent of the holder of such Bond, or (b) a reduction in the amount or extension of the time of any payment required by any sinking fund applicable to any Bonds without the consent of the holders of all the Bonds which would be affected by the action to be taken, or (c) the creation of any lien prior to or on a parity with the lien of this Indenture without the consent of the holders of all the Bonds at the time outstanding, or (d) a reduction in the aforesaid aggregate principal amount of Bonds the

holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all the Bonds at the time outstanding which would be affected by the action to be taken, or (e) a modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, or (f) a privilege or priority of any Bond over any other Bonds, or (g) a derivation of the Owners of any Series 20\_\_ Bonds then Outstanding of the lien thereby created.

Anything herein to the contrary notwithstanding, a supplemental indenture under this Article which materially affects any rights of the Borrower shall not become effective unless and until the Borrower shall have consented in writing to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture together with a copy of the proposed supplemental indenture to be mailed by certified or registered mail to the Borrower at least fifteen (15) days prior to the proposed date of execution and delivery of any such supplemental indenture.

Section 9.3. Opinion of Counsel. The Trustee shall receive prior to its entry into any supplemental indenture under this Article IX, and shall be fully protected in relying upon, the opinion of any counsel approved by it who may be counsel for the Issuer, as conclusive evidence that any such proposed supplemental indenture complies with the provisions of this Indenture, and that it is proper for the Trustee, under the provisions of this Article IX, to join in the execution of such supplemental indenture

(End of Article IX)

## ARTICLE X.

### AMENDMENTS TO THE LOAN AGREEMENT

Section 10.1. Amendments, etc., to Loan Agreement Not Requiring Consent of Bondholders. The Issuer and the Trustee with the consent of the Borrower shall, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Loan Agreement as may be required (i) by the provisions of the Loan Agreement and this Indenture, including particularly amendments to the Loan Agreement relating to the issuance of additional notes, or (ii) for the purpose of curing any ambiguity or formal defect or omission, or (iii) in connection with any other change therein which, in the judgment of the Trustee, is not to the prejudice of the Trustee, the Issuer or the holders of the Bonds.

Section 10.2. Amendments, etc., to Loan Agreement Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 10.1 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Loan Agreement without the consent of the Borrower and the written approval or consent of the Requisite Bondholders given and procured as in Section 9.2 provided.

Section 10.3. No Amendment May Alter Notes. Under no circumstances shall any amendment to the Loan Agreement alter the Notes or the payments of principal and interest thereon, without the consent of the holders of all the Bonds at the time outstanding.

Section 10.4. Opinion of Counsel. The Trustee shall receive prior to consenting to any amendment to the Loan Agreement under this Article X, and shall be fully protected in relying upon, the opinion of any counsel approved by it who may be counsel for the Issuer, as conclusive evidence that any such consent complies with the provisions of this Indenture, and that it is proper for the Trustee, under the provisions of this Article X, to consent to such amendment to the Loan Agreement.

(End of Article X)

## ARTICLE XI.

### MISCELLANEOUS

Section 11.1. Satisfaction and Discharge. All rights and obligations of the Issuer and the Borrower under the Loan Agreement, the Notes and this Indenture shall terminate, and such instruments shall cease to be of further effect, and the Trustee shall cancel the Notes and deliver them to the Borrower, shall execute and deliver all appropriate instruments evidencing and acknowledging the satisfaction of this Indenture, and shall assign and deliver to the Borrower any moneys and investments in all Funds established hereunder (except moneys or investments held by the Trustee for the payment of principal of, interest on, or premium, if any, on the Bonds) when

- (a) all fees and expenses of the Trustee and the Paying Agent shall have been paid;
- (b) the Issuer and the Borrower shall have performed all of their covenants and promises in the Loan Agreement, the Notes and in this Indenture; and
- (c) all Bonds theretofore authenticated and delivered (i) have become due and payable, or (ii) are to be retired or called for redemption under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee at the expense of the Borrower, or (iii) have been delivered to the Trustee canceled or for cancellation; and, in the case of (i) and (ii) above, there shall have been deposited with the Trustee either cash in an amount which shall be sufficient, or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee, shall be sufficient, to pay when due the principal or redemption price, if applicable, and interest due and to become due on the Bonds and prior to the redemption date or maturity date thereof, as the case may be.

Provided, however, none of the Bonds may be advance refunded if such advance refunding is not permitted by the laws of the State of Indiana.

Section 11.2. Defeasance of Bonds. Any Bond shall be deemed to be paid and no longer Outstanding within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal and interest of and premium, if any, on such Bond either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably set aside exclusively for such payment, (1) cash sufficient to make such payment, (2) Government Obligations, maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient moneys to make such payment, or (3) a combination of cash and such Government Obligations, and (b) all necessary and proper fees, compensation, indemnities and expenses of the Trustee and the Issuer pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for. The Trustee shall be entitled to receive a verification report of an independent certified public accountant, verification agent or similar expert to the effect that such securities and/or cash, together with the earnings thereon, will be sufficient to pay interest and principal (and applicable

premium) on the Bonds to redemption or maturity or an opinion of counsel to the effect that all conditions precedent to the defeasance have been complied with. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Obligations.

Notwithstanding the foregoing, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds shall have been previously given in accordance with Section 5.3 of this Indenture, or if the Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, until the Borrower shall have given the Trustee in form satisfactory to the Trustee irrevocable instructions to notify, as soon as practicable, the Owners of the Bonds, that the deposit required by the preceding paragraph has been made with the Trustee and that the Bonds are deemed to have been paid in accordance with this Section 11.2 and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and the applicable redemption premium, if any, on said Bonds, plus interest thereon to the due date thereof; or (b) the maturity of such Bonds.

All moneys so deposited with the Trustee as provided in this Section 11.2 may also be invested and reinvested, at the written direction of the Borrower, in Government Obligations, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Government Obligations in the hands of the Trustee pursuant to this Section 11.2 which is not required for the payment of principal of the Bonds and interest and premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Section 11.2, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Section 11.2 for the payment of Bonds (including premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including the premium thereon, if any) with respect to which such moneys or Government Obligations have been so set aside in trust.

In determining the sufficiency of the moneys and/or Government Obligations deposited pursuant to this Section 11.2, the Trustee shall be entitled to receive, at the expense of the Issuer, a verification report of a firm of nationally recognized independent certified public accountants and a defeasance opinion from nationally recognized bond counsel.

Anything in Article 9 hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Section 11.2 for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Section 11.2 shall be made without the consent of the Owner of each Bond affected thereby.

The right to register the transfer of or to exchange Bonds shall survive the discharge of this Indenture.



Section 11.3. Cancellation of Series 20\_\_ Bonds. If the Owner of any Series 20\_\_ Bonds presents that Bond to the Trustee with an instrument satisfactory to the Trustee waiving all claims for payment of that Bond, the Trustee shall cancel that Series 20\_\_ Bond and the Bondholder shall have no further claim against the Trust Estate, the Issuer, or the Borrower with respect to that Series 20\_\_ Bond.

Section 11.4. Application of Trust Money. All money or investments deposited with or held by the Trustee pursuant to Section 11.1 shall be held in trust for the holders of the Bonds, and applied by it, in accordance with the provisions of the Bonds and this Indenture, to the payment, either directly or through the Paying Agent, to the persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money or obligations need not be segregated from other funds except to the extent required by law.

Section 11.5. Consents, etc., of Bondholders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be executed by such Bondholders in person or by agent appointed in writing. Provided, however, that wherever this Indenture or the Loan Agreement requires that any such consent or other action be taken by the holders of a specified percentage, fraction or majority of the Bonds outstanding, any such Bonds held by or for the account of the following persons shall not be deemed to be outstanding hereunder for the purpose of determining whether such requirement has been met: the Issuer, any of its members, the Borrower, or the directors, trustees, officers or members of the Borrower. For all other purposes, Bonds held by or for the account of such person shall be deemed to be outstanding hereunder. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of the holding by any person of Bonds transferable by delivery and the amounts and numbers of such Bonds, and the date of the holding of the same, may be proved by a certificate executed by any trust Borrower, bank or bankers, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust Borrower or bank or to such banker, as the property of such party, the Bonds therein mentioned if such certificate shall be deemed by the Trustee to be satisfactory. The Trustee may, in its discretion, require evidence that such Bonds have been deposited with a bank, bankers or trust Borrower, before taking any action based on such ownership. In lieu of the foregoing, the Trustee may accept other proofs of the foregoing as it shall deem appropriate.

For all purposes of this Indenture and of the proceedings for the enforcement hereof, such person shall be deemed to continue to be the holder of such Bond until the Trustee shall have received notice in writing to the contrary.

Section 11.6. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture, or the Bonds is intended or shall be construed to give to any person other than the parties hereto, and the Borrower, and the holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Borrower and the holders of the Bonds as herein provided.

Section 11.7. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

Section 11.8. Notices. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified or overnight mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Indenture. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as provided in Section 9.4 of the Loan Agreement.

Section 11.9. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.10. Applicable Law. This Indenture shall be governed exclusively by the applicable laws of the State of Indiana.

Section 11.11. Immunity of Officers and Directors. No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future members, officer, directors, agents, attorneys or employees of the Issuer, or any incorporator, member, officer, director, agents, attorneys, employees or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation,

under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, members, officers, directors, agents, attorneys, employees or trustees as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and issuance of such Bonds.

Section 11.12. Holidays. If any date for the payment of principal or interest on the Bonds is not a business day then such payment shall be due on the first business day thereafter.

Section 11.13. Reconstruction or Substitution of Leased Premises. If all or a portion of the Leased Premises shall be damaged or destroyed or subject to condemnation, the Borrower shall have certain rights and obligations to reconstruct or substitute other property for such Leased Premises, pursuant to and subject to the terms and conditions set forth in the Lease.

(End of Article XI)

IN WITNESS WHEREOF, the City of Westfield, Indiana, has caused these presents to be signed in its name and behalf by the Mayor and its corporate seal to be hereunto affixed and attested by its Clerk-Treasurer, and to evidence its acceptance of the trusts hereby created, and [TRUSTEE] has caused these presents to be signed in its name and behalf by, its official seal to be hereunto affixed by, its duly authorized officer, all as of the day and year first above written.

CITY OF WESTFIELD, INDIANA

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

(SEAL)

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Clerk-Treasurer

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

EXHIBIT A

CONSTRUCTION ACCOUNT DISBURSEMENT REQUEST

CITY OF WESTFIELD, INDIANA  
TAXABLE ECONOMIC DEVELOPMENT LEASE RENTAL REVENUE BONDS,  
SERIES 20\_\_ (UNION SQUARE PROJECT)

Request for Disbursement from Construction Account

Request No. \_\_\_\_

[TRUSTEE]

Attn: Corporate Trust Department

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

THE UNDERSIGNED hereby certifies that he/she is an Authorized Borrower Representative as defined under the Trust Indenture, dated as of \_\_\_\_\_ 1, 20\_\_ (the "Trust Indenture"), between the City of Westfield, Indiana and \_\_\_\_\_, as trustee (the "Trustee"). Terms used in this Request and not defined in this Request are used with the meanings ascribed to such terms in the Trust Indenture.

Pursuant to Section 4.3(c) of the Trust Indenture, the Borrower hereby orders the Trustee to pay the Financed Project Costs, as described on Schedule 1 to this Request.

IN SUPPORT OF THIS REQUEST, the undersigned Authorized Borrower Representative of the Borrower certifies as follows:

1. The aggregate costs or obligations set forth in this Request (a) have been made or incurred, (b) were necessary for the construction of the Project, and (c)(i) were made or incurred in accordance with the effective construction contracts, plans and specifications or purchase contracts or (ii) are for otherwise allowable Financed Project Costs;

2. The amount(s) paid or to be paid is(are) reasonable and represent(s) a part of the amount(s) payable for the Financed Project Costs; and such payment(s) was(were) made in accordance with the terms of any contracts applicable thereto and in accordance with usual and customary practice under existing conditions;

3. No part of such costs or obligations was included in any written request previously filed with the Trustee under the provisions of the Trust Indenture;

4. Exhibit A to this Request is a "recap" of the vendors and the respective amounts paid or to be paid pursuant to this Request; and

5. Such costs are appropriate for the expenditure of proceeds of the Bonds under the Act.

Date: \_\_\_\_\_, 20\_\_

CITY OF WESTFIELD BUILDING  
CORPORATION

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT B

BOND ISSUANCE COSTS